

Clerk's 14-Day Extension of Time to Answer

See LBR 5075.1(a)(1)(A) and Fed. R. Bankr. P. 7012(a)

Formerly known to many practitioners as the “Clerk’s 10-day extension,” consistent with the time computation amendments to the Federal Rules of Bankruptcy Procedure, the local rule allows the Clerk to enter an order granting a **14-day** extension of time to answer or respond to an adversary complaint. Remember, the Clerk’s extension is a one-time extension. *See* LBR 5075.1(a)(1)(A)(i).

A party’s request for a Clerk’s Extension and the Clerk’s order granting the request is now effected wholly through CM/ECF (*See* docketing instructions on page 3) and should contain: (1) the original answer date (the date that the answer is initially due); (2) the new answer date (the date that the answer will be due with the 14-day extension); and (3) a representation that the initial answer date has not expired at the time of the request (*i.e.* the Clerk’s extension is timely sought). *See* LBR 5075.1(a)(3). If it is too late for the Clerk’s extension (the original due date expired before the request was made), the party will have to file a conventional motion to extend the time to answer and to file an answer out of time. The Clerk is not authorized to grant such relief.

Calculating the original answer date to a complaint:

There appears to be much confusion or misunderstanding of when the answer time begins to run in an adversary proceeding. It differs from a non-bankruptcy federal district court civil suit. Fed. R. Bankr. P. 7012(a) states that if the adversary complaint is duly served, a non-governmental defendant shall serve an answer within 30 days after the *issuance of the summons*. If the United States, an officer or agency thereof, is the defendant, the answer is due 35 days after *issuance of the summons*. In contrast, Fed. R. Civ. P. 12(a)(1)(A)(i) states that a non-governmental defendant shall serve an answer within 21 days *after being served with the summons and complaint*. In short, 30 days after issuance of the summons is not necessarily the same as 30 days after service of the summons. It is not uncommon in adversary proceedings where service may be made by first class mail, Rule 7004(b), that the summons is issued on a different date than the summons is served (executed). In the docket report of an adversary proceeding, there will be docketed entries for a request for summons, issuance of the summons, and execution (or service) of the summons. Keep in mind that under Fed. R. Bankr. P. 7004(e), the plaintiff has up to 7 days after issuance of the summons to deposit the summons and complaint in the mail for service. Also, if the 30th day after issuance of the summons lands on a Saturday, Sunday, or Legal Holiday, the answer is due on the next day that is not a Saturday, Sunday, or Legal Holiday. *See* Fed. R. Bankr. P. 9006(a)(1).

Calculating the reply and answer dates to counterclaims and cross-claims:

Less frequently, a party may request a clerk's 14-day extension to reply to a defendant's counterclaim or answer a party's cross-claim. The calculation of the due date for these pleadings differs from the calculation of the original answer, because if the parties are already named and in the case, a summons will not issue. Note that ordinarily the counterclaim and cross-claim will be contained in the defendant's answer. A reply to a counterclaim or an answer to a cross-claim is due *21 days after service of the counterclaim or cross-claim*. The due date for the United States, or an officer or agency thereof, is *35 days after service of the counterclaim or cross-claim upon the U.S. Attorney*. See Fed. R. Bankr. P. 7012(a).

Debtor Defendants:

Fed. R. Bankr. P. 7012(a) is careful to contain the proviso "if the adversary complaint is duly served," the answer is due 30 days after issuance of the summons. Remember, if the defendant is the debtor and debtor is represented by counsel in the bankruptcy case, Rule 7004(g) requires service of summons and complaint on both the debtor and the debtor's attorney. Debtor is served pursuant to Rule 7004(b)(9) (first class mail to debtor at the address in the petition) and debtor's attorney is served pursuant to Fed. R. Civ. P. 5(b). In such a case, if either one is not served, service is incomplete and insufficient. Giving the debtor's attorney notice of the filing of the adversary complaint through the ECF system is not sufficient. See *Clune Company, LC v. Johnson (In re Johnson)*, 2011 WL 482837 (Bankr. D. Kan. Feb. 7, 2011) (Somers, J.); Appendix 1-01 to D. Kan. LBR 5005.1, § II.D. and § IX.C. Service on the debtor by first class mail to the address provided on the petition is complete when the summons and complaint are mailed, whether the address is correct or not. See *In re Tatum*, 2012 WL 2076424 (Bankr. D. Kan. June 7, 2012) (Nugent, C.J.); *In re Wallace*, 316 B.R. 743, 747 (10th Cir. BAP 2004); Fed. R. Bankr. P. 9006(e) (service of process by mail is complete on mailing).

Docketing Instructions - Request For Clerk's Extension of Time to Answer

Attorney filers can file this request as a text only entry and no longer have to upload a motion nor the proposed Clerk's Entry form.

1. Party files Adversary>Other>**Request for Entry of Clerk's Extension of Time Pursuant to LBR 5075.1(a)** (this will be a text only entry for attorney filers)
Party must verify:
 - a. Original due date is correct
 - b. Original due date has not passed
 - c. Extended date being sought is 14 days or less from the original due date
2. Clerk's Office will verify the information and then enter a system generated notice approving the Request if all is appropriate.